

P/C \_\_\_\_\_  
CA \_\_\_\_\_  
1st R 7/1/14 Sp. Council  
2nd R \_\_\_\_\_  
3rd R \_\_\_\_\_  
B/C \_\_\_\_\_  
Sp. Caucus 7/1/14  
Sp. Council 7/1/14

CITY OF BROOK PARK, OHIO

ORDINANCE NO: 9923-2014

INTRODUCED BY: COUNCIL AS A WHOLE

AN ORDINANCE  
APPROVING AN EASEMENT FOR THE  
RETENTION BASIN LOCATED AT 20400 SHELDON ROAD,  
AND DECLARING AN EMERGENCY

WHEREAS, on June 2, 2014, the Planning Commission approved and referred to Council a request for an easement at 20400 Sheldon Road between Koch Properties, Ltd., and the City of Brook Park;

WHEREAS, the City of Brook Park needs to acquire an easement from Koch Properties, Ltd., to maintain a retention basin located on their property; and

WHEREAS, the owners of the land for the retention basin have agreed to grant the necessary easement to the City of Brook Park as shown in the attached Exhibit "A."

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Brook Park, State of Ohio, that:

SECTION 1: The easement is further described in Exhibit "A," attached hereto and incorporated herein by reference and is hereby authorized and approved by the Council of the City of Brook Park.

SECTION 2: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3: This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and for the further reason that it is Council's desire to approve said

Easement; therefore, this Ordinance shall take effect and be in force immediately from and after its passage and approval by the Mayor.

PASSED: July 1, 2014

Denning Patten  
PRESIDENT OF COUNCIL

ATTEST: Michelle Blazak  
Clerk of Council

APPROVED: [Signature]  
MAYOR

7/1/2014  
DATE

**I HEREBY APPROVE THE WITHIN INSTRUMENT AS TO LEGAL FORM AND CORRECTNESS**

[Signature]  
DIRECTOR OF LAW

**CERTIFICATE**

Michelle Blazak, Clerk of Council, of the City of Brook Park, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ordinance/Resolution

No. 9923-2014

passed on the 1st day of July 2014 by said council.

Michelle Blazak  
Clerk of Council

Michelle Blazak, Clerk of Council for the City of Brook Park, State of Ohio, do hereby certify that there is no newspaper of general circulation in the municipality and that publication of the foregoing ordinances/resolutions was made by posting true copies at six of the most public places in said municipality as determined by Ordinance No. 4838-1975; location City Hall 6151 Engle Road, Police Station 17401 Holland Road, #1 Fire Station 5590 Smith Road, #2 Fire Station 22530 Ruple Parkway, #3 Fire Station 17401 Holland Road, Brook Park Library 6165 Engle Road, for a period of fifteen days.

commencing July 2, 2014  
Michelle Blazak  
MICHELLE BLAZAK  
Clerk of Council

**EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT ("Easement Agreement") is made as of the 1<sup>st</sup> day of July, 2014, by and between KOCH PROPERTIES, LTD, an Ohio limited liability company (hereinafter referred to as "Grantor"), and THE CITY OF BROOK PARK, OHIO, a municipal corporation (hereinafter collectively referred to as "Grantee").

**WITNESSETH:**

**WHEREAS**, Grantor is the owner of certain real property located in the City of Brook Park, Cuyahoga County, Ohio, commonly known as being part of original Middleburg Township Lot No. B, Section No. 19, more fully described by the legal description attached hereto and made a part hereof as Exhibit A, (hereinafter referred to as the "Grantor's Property"); and

**WHEREAS**, Grantor has installed a retention basin on Grantor's property; and

**WHEREAS**, Grantor has agreed to grant the Easement in favor of Grantee, and to assume all obligations for inspection, repair and maintenance of the Easement premises.

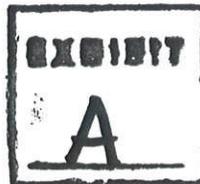
NOW THEREFORE, in consideration of the premises, the mutual covenants, promises and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. Grant of Easement. Grantor hereby grants the Easement to Grantee and its successors and assigns on a non-exclusive basis. Grantor shall perform, or cause to be performed, all necessary inspections, repairs, and maintenance in connection with the Easement, it being the intention of the parties that Grantee shall not be obligated in any manner whatsoever to perform any of the foregoing functions in connection with the Easement.

2. Grantee's Right of Enforcement. Notwithstanding the foregoing paragraph, Grantee shall have the right in its sole discretion (but not the obligation) to enforce inspection of the Easement premises and the retention basin.

3. Fee Title. Grantor shall retain fee title to the Easement premises. Except for the rights granted herein, Grantee shall not interfere with the use and enjoyment of, or access to or from, Grantor's Property.

4. Term. The term of this Easement Agreement and the easements granted hereby shall continue in perpetuity unless sooner terminated by the consent of the parties hereto or their respective successors in interest or assigns or in conformity with applicable law.



5. Warranty of Title. Grantor represents and warrants that it has good and indefeasible fee simple title to the Easement premises.

6. Covenants Running with the Land. The Easement shall run with the land and shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

7. Entire Agreement. This Easement Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. No modification of this Easement Agreement shall be binding upon the parties unless set forth in writing and signed by the parties, or their respective successors or assigns.

8. Severability. If any provision of this Easement Agreement is invalid or unenforceable, this Easement Agreement shall be divisible as to such provision and the remainder of this Easement Agreement shall be and remain valid and binding as though such provision were not included herein.

9. Headings and Captions. Headings and captions in this Easement Agreement are for convenience of reference only and shall not limit or affect the meaning hereof.

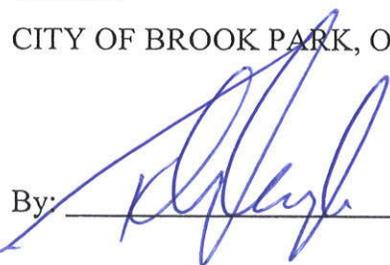
10. Counterparts. This Easement Agreement may be executed in counterparts which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed and delivered the within Easement Agreement as of the day and year first above written.

Grantor:  
KOCH PROPERTIES, LTD

By:   
Gerald W. Koch, Authorized Member

Grantee:  
CITY OF BROOK PARK, OHIO

By:   
Title: Mayor

STATE OF OHIO )  
 )SS:  
COUNTY OF CUYAHOGA )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of March, 2014, by Gerald W. Koch, Authorized Member of KOCH PROPERTIES, LTD, an Ohio limited liability company, Grantor in the foregoing instrument, who acknowledged that he did sign the foregoing instrument as his free act and deed and the free act and deed of said Grantor.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date set forth above.

  
\_\_\_\_\_  
Notary Public

**JILL BERARDI**  
NOTARY PUBLIC • STATE OF OHIO  
Recorded in Cuyahoga County  
My commission expires Nov. 1, 2016

STATE OF OHIO )  
 )SS:  
COUNTY OF CUYAHOGA )

The foregoing instrument was acknowledged before me this 1 day of ~~March~~ <sup>July</sup>, 2014, by Thomas J. Coyne, Jr., the Mayor of the City of Brook Park, Ohio, a municipal corporation, Grantee in the foregoing instrument, who acknowledged that he/she did sign the foregoing instrument as his/her free act and deed, and the free act and deed of said Grantee.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date set forth above.

  
\_\_\_\_\_  
Notary Public

**KATE M. SCHMIDT**  
Notary Public - State of Ohio  
My Commission Expires 9-2-15

THIS INSTRUMENT PREPARED BY:  
C. Anthony Stavole  
**STAVOLE & MILLER**  
5700 Pearl Road, Suite 202  
Cleveland, OH 44129  
440-886-0001

## EXHIBIT A

Situated in the City of Brook Park, Cuyahoga County and, Being part of Original Middleburg Township Lot No. 3, Section No. 19, bounded and described as follows:

Beginning at the intersection of the center line of Sheldon Road and Riverside Drive; thence from said place of beginning North 24° 45' 23" East, along said center line of Riverside Drive, 1006.23 feet; thence South 78° 19' 00" East, about 373.65 feet but to the Southeasterly line of a highway established by the Director of Highways, State of Ohio, designed as State Highway No. 713, Sections Berea, (Part), Brook Park, and Cleveland, (Part), and more particularly described in the Right of Way Section of the Journal of said Director of Highways made on March 11, 1943, ix, Volume 28, page 10, said point in the Southeasterly line of said Highway is the principal place of beginning of the following described parcel of land.

Thence from said principal place of beginning South 78° 19' 00" East, about 644 feet but to the Northeasterly line of the right of way of the New York Central Railroad, as described in Deed Volume 1050, page 28;

Thence North 30° 24' 00" East, along said Northwesterly right of way line, about 311 feet but to an angle in said line;

Thence North 59° 36' 00" West, following said right of way line, 33 feet to and angle in said right of way line;

Thence North 30° 24' 00" East, continuing along said Northwesterly right of way line about 576 feet but to the corner of lands included in said State Highway, as described in said Journal;

Thence South 88° 58' 45" West, along said Southerly line of lands included in said State Highway, as described in said Journal, about 435 feet to an angle;

Thence South 43° 46' 00" West, along the Southeasterly line of lands included in said State Highway, about 891 feet but to the principal place of beginning.

The above described parcel of land contains about 9.35 Acres of land. Also a right of way 20 feet of even width along the Northwesterly line of said right of way, of said Railroad, from Sheldon Road to the above-described premises, which right of way shall be used by the Grantor and Grantee, their heirs, executors, administrators, successors and assigns.

Permanent Parcel No. 341-26-005